

ORDINANCE NO. 2974-07



An Ordinance regulating leasing and licensing of City-owned real property

Whereas, pursuant to RCW 35.22.302, first class cities that own real property have express legislative authority to “convey or lease for public or private use any estate, right or interest in the areas above the surface of the ground of such real property or structures or improvements thereon ...” as long as the property is not already dedicated to a public use that is inconsistent with the proposed new use; and

Whereas, on September 19, 2006, the voters approved an amendment to the City Charter that deleted Section 15.8 and substituted the following: “In addition to the powers accorded to the City under the laws and constitution of the State of Washington with respect to the ownership and disposition of property, the Council may by ordinance provide regulation for the sale or lease of City property”; and

Whereas, this Ordinance is intended to address the leasing and licensing of City-owned real property, leaving the process for the sale of City-owned real or personal property to be addressed in separate ordinances; and

Whereas, this Ordinance is intended to be consistent with Washington statutory and constitutional law; and

Whereas, this Ordinance is intended to establish a leasing and licensing process that is flexible enough to take into account different leasing or licensing scenarios while considering the possible future requirements of the City, public benefits, intergovernmental cooperation, economic return and ease of administration;

NOW, THEREFORE, THE CITY OF EVERETT DOES ORDAIN:

Section 1. Council considerations in determining whether to approve a lease or license.

Except as otherwise provided in this Ordinance, City-owned real property shall not be leased without prior City Council approval. In determining whether to approve a lease or license, the Council shall consider such factors as possible future needs of the City for the property proposed to be leased or licensed; the public benefits of leasing or licensing said property; the promotion of intergovernmental cooperation; whether the lease or license provides the best economic return to the City and the ease of administering the proposed lease or license.

Section 2. Leasing and licensing of real property – exempt agreements.

The following types of agreements may be approved by the Mayor or his designee without prior Council approval and shall be exempt from the requirements of Section 1:

- A. An agreement with an independent contractor to provide limited concession services on City-owned real property on a seasonal or temporary time basis.
- B. Agreements to lease an interest in City-owned real property where the term does not exceed one year and the City can terminate the lease upon 30 or fewer days' notice.
- C. Agreements to license the use of City-owned real property where the term does not exceed one year and the City can terminate the license upon 30 or fewer days' notice.
- D. Renewals of leases pursuant to options to renew contained in the lease agreements where the rate is the same or higher and other terms are not substantially different from the existing lease.

Section 3. Agreements to license distinguished from agreements to lease.

The City may enter into agreements to license City-owned property when the City does not wish to grant a possessory interest in such property but does wish to authorize the licensee to carry out an act or series of acts on such property. Agreements to license shall not purport to grant a possessory interest in City-owned property, shall not be inheritable nor assignable, and shall be revocable at the will of the City. To the extent that they are not inconsistent with the foregoing limitations, the standards set forth in Sections 1, 2, 4, 5 and 6 of this Ordinance for leasing shall also apply to licensing of City-owned real property.

Section 4. Leasing/licensing to be conducted in a commercially reasonable manner.

Except for leases or licenses to non-profit organizations that serve poor or infirm persons or other governmental entities, the City must conduct the leasing of any City-owned real property in a commercially reasonable manner. The City's Facilities Director or Real Property Manager or the City department head most directly affected by the use of the real property in question shall make the initial determination that the proposed real estate transaction is commercially reasonable and ensure that the City receives adequate consideration in any lease or license agreement.

Section 5. Responsibility for Administration.

The Mayor or his designee is responsible for the administration of the lease or license of City-owned real property and shall coordinate the leasing of interests in City land or buildings.

Section 6. Methods for Leasing/Licensing.

The City may lease or license City-owned real property, using one of the following methods:

- A. A call for bids to obtain the highest obtainable rent given the terms.
- B. A request for proposals to obtain a proposal that provides the most advantageous special conditions on the use of the City-owned real property.
- C. Negotiations with a designated person or organization.

In conjunction with any method above, a public hearing on the proposed lease or license may be set and the hearing held prior to taking action on the proposed lease or license.

For those leases or licenses that come before Council, in conjunction with bringing the proposed lease to Council, the affected department head will make a recommendation to the Council as to the method that may be most appropriate for achieving the Council's goals with respect to the City-owned real property.

Section 7. Effect of additional statutory requirements.

Certain provisions of the Revised Code of Washington impose additional and/or inconsistent conditions on the leasing of City-owned real property. Where necessary, the City shall comply with those laws, treating them as limited exceptions to this Ordinance. The following are merely examples of these laws as they may from time to time be amended. The advice of the City Attorney's Office should be sought whenever there are questions about the application of laws to proposed leasing transactions:

- A. RCW Chapter 35.94, relating to the lease or sale of land, property or equipment originally acquired for public utility purposes, imposes additional steps to those otherwise required in other sections of this Ordinance.
- B. RCW Chapters 39.33 and 39.34 impose additional steps to those otherwise required in other sections of this Ordinance. These statutes affect intergovernmental real estate transactions where the estimated value of the property exceeds \$50,000.
- C. RCW 35.42.010 – 35.42.090, relating to leasing of City-owned land where the purpose of the lease is to erect a building for City use and lease back the building, impose additional conditions to those already required in other sections of this Ordinance.

Section 8. Severability.

If any section, subsection, clause, sentence, or phrase of this ordinance should be held invalid or unconstitutional, such decision shall not affect the validity of the remaining portions of this ordinance.

Section 9. Enactment not to effect pending case, proceeding or appeal.

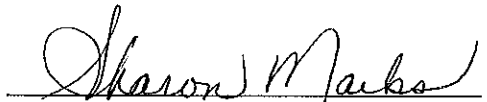
The enactment of this Ordinance shall not affect any case, proceeding, or appeal currently pending before the City or in any court.

Section 10. Authority to correct scrivener's errors.

The City Clerk and the codifiers of this Ordinance are authorized to make necessary corrections to this Ordinance including, but not limited to, the correction of scrivener's clerical errors, references, ordinance numbering, section/subsection numbers and any references thereto.


RAY STEPHANSON, MAYOR

ATTEST:


SHARON MARKS, CITY CLERK

Passed: 2/21/07

Valid: 2/26/07

Published: 3/1/07

Effective: 3/13/07